

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**ERIC WILLIAMS,
APPELLANT**

vs.

**WILLIAM L. HUBBARD, LIMITED ADMINISTRATOR AD LITEM OF THE ESTATE OF
BETTY MARGARET REYNOLDS AND KENNETH NELSON AND SANDRA K.
NELSON, HUSBAND AND WIFE
RESPONDENTS**

DOCKET NUMBER WD76023

DATE: OCTOBER 15, 2013

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Kathleen A. Forsyth, Judge

Appellate Judges:

Division One: Victor C. Howard, P.J., Joseph M. Ellis and Anthony Rex Gabbert, JJ.

Attorneys:

Rex V. Gump, for Appellant

John M. Kilroy, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

**WILLIAM L. HUBBARD, LIMITED ADMINISTRATOR AD LITEM OF THE ESTATE OF
BETTY MARGARET REYNOLDS AND KENNETH NELSON AND SANDRA K.
NELSON, HUSBAND AND WIFE, RESPONDENTS**

WD76023

Jackson County, Missouri

Before Division One Judges: Victor C. Howard, Joseph M. Ellis and Anthony Rex Gabbert, JJ.

In 2000, Betty Margaret Reynolds (“Decedent”) hired Respondent Kenneth Nelson, an attorney, to draft her will. In preparation for preparing Decedent’s will, Kenneth requested that Decedent fill out a questionnaire regarding her assets. Decedent indicated in the questionnaire that she had seven holdings – four bank accounts and three brokerage accounts. Decedent further indicated on the questionnaire that these holdings all had either beneficiary or joint ownership designations. Appellant Eric Williams, Decedent’s second cousin, was not listed as the beneficiary or joint owner on any of the accounts. Prior to her death, Decedent closed four of the seven accounts listed on the questionnaire and used the funds therein to open new accounts at UMB bank.

In 2006, Decedent instructed Kenneth to change her will. In doing so, Decedent named Appellant and Respondent Sandra Nelson as equal beneficiaries of her will. Sandra is Kenneth’s wife. Sandra’s mother and Decedent were good friends.

In 2010, Decedent passed away. At the time of her death, Decedent had eight holdings, all of which passed to Sandra outside of probate through either POD beneficiary or joint ownership designations on the accounts. Appellant subsequently filed suit against Sandra and Kenneth alleging that Sandra procured her beneficiary and ownership interests in Decedent’s holdings as a result of undue influence. Appellant further alleged Kenneth committed legal malpractice and breached his fiduciary duties to Decedent by drafting the 2006 will and failing to adequately inform Decedent about nonprobate transfers.

In 2012, Respondents each filed a motion for summary judgment. They contended that Appellant had no standing to challenge the transfer of Decedent’s assets to Sandra because Appellant would not be entitled to any of Decedent’s holdings upon a finding of undue influence in that he was not the prior beneficiary or joint owner designated on any of Decedent’s holdings. Appellant opposed the motions, asserting that Decedent’s

holdings would revert back to her estate, of which he is entitled to half, upon a finding of undue influence. The circuit court granted summary judgment in Respondents' favor on the basis that Appellant lacked standing pursuant to this Court's holding in ***Crocker v. Crocker***, 261 S.W.3d 724, 727 (Mo. App. W.D. 2007). Appellant raised five points on appeal.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART

Division One holds:

(1) The circuit court erred in finding that Appellant lacked standing, as a matter of law, to pursue the imposition of a constructive trust with respect to the funds in Decedent's UMB CDs because our holding in *Crocker* does not preclude the possibility that the funds in Decedent's UMB CDs, which came from Decedent's closed accounts, would revert back to Decedent's estate, to which Appellant is entitled to half, upon a finding that Sandra exercised undue influence in procuring her beneficiary and ownership interests in those accounts.

(2) The circuit court did not err in determining that Appellant lacked standing to seek the imposition of a constructive trust with respect to Decedent's IRA and checking accounts because those accounts all had previous POD beneficiary designations; thus § 461.037 applies, and, upon a finding of undue influence, the funds in those accounts would revert back to the previous beneficiary designations, none of which were Appellant.

(3) The circuit court did not err in concluding that Appellant lacked standing to seek the imposition of a constructive trust with respect to Decedent's brokerage accounts because, although our holding in *Crocker* is inapplicable to those accounts, Appellant has failed to prove what expectancy interest in Decedent's brokerage accounts he was deprived of by Sandra's alleged exercise of undue influence in that, he was not the joint owner of either account at the time Sandra was designated as the joint owner of both accounts.

(4) The circuit court erred in finding that our holding in *Crocker* precluded Appellant from pursuing his claims of legal malpractice and breach of fiduciary duty against Kenneth in that Appellant, as a beneficiary of Decedent's estate, could possibly be entitled to the funds in Decedent's UMB CDs upon a finding of undue influence and, therefore, could have suffered a loss as a result of the alleged breach of fiduciary and legal malpractice.

Opinion by Joseph M. Ellis, Judge

Date: October 15, 2013

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